


66TH CONFERENCE ON EXCEPTIONAL CHILDREN

## Rethinking Guardianship and Less Restrictive Alternatives

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**SELF-ASSESSMENT: A Journey of Change**

PUBLIC SCHOOLS OF NORTH CAROLINA  
State Board of Education | Department of Public Instruction

November 8-10, 2016

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### Rethinking Guardianship: Building a Case for Less Restrictive Alternatives

- A collaborative effort between the NC Council on Developmental Disabilities, the NC Department of Aging and Adult Services, and the UNC-CH School of Social Work, Jordan Institute for Families.

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## Rethinking Guardianship Initiative

- Create long-term changes in North Carolina's guardianship system; promote less restrictive alternatives to guardianship
- National initiative sponsored by the National Guardianship Network - **Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS)**
- Collective Impact Framework – an innovative structured and collaborative approach to address complex social problems to achieve significant and lasting social change.

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## Rethinking Guardianship Workgroup

Statewide workgroup with diverse perspectives:

- NC Legislature
- NC DHHS – DAAS, MH/DD/SAS
- North Carolina Courts - Clerks, Judges, Bar Association, Elderlaw
- Disability Rights NC
- Self-Advocates/Family members – Mental Health/ IDD/ Aging
- Statewide organizations
  - Public/Private Guardianship
  - Independent Living Programs
  - Intellectual/Developmental Disabilities
  - Advocacy Organizations

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## Guardianship

Guardianship is a legal relationship in which someone (the guardian) is authorized by the clerk of superior court to be substitute decision maker for an **incompetent** adult (the ward).

Incompetent – the inability to make or communicate decisions about physical health, safety, self-care, and well-being.

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## Types of Guardianship

### Guardian of the Person

Makes decisions about the ward's personal care and well-being, such as housing and medical decisions. The Guardian of the Person cannot handle the ward's money.

### Guardian of the Estate

Handles the ward's finances (estate), but cannot make decisions about the ward's personal care and well-being.

### General Guardian

Make personal decisions for and handle the finances of the ward.

### Limited Guardianship

Guardian has limited areas of responsibility specified by Clerk of Court.

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## General Guardianship

General Guardian makes ALL decisions for the "ward"

- Where they will live
- Whether they can work
- Decisions about medical, dental, mental health care
- Control over finances
- Voting rights
- Driving privileges

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## Guardianship Issues

- Lack of information and education for guardians
- Lack of oversight for those in guardianship
- Increasing numbers under public guardianship
- Inconsistencies in administration across counties
- Difficulty getting competence restored

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## Does Every Student with Special Needs Require Guardianship?

When a child turns 18, they become an adult and have the legal authority to make their own decisions about their medical treatment, finances and life.

Many parents with children who have special needs are told to seek guardianship of their transition age child.

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## Transition to Adulthood

Transition-aged adolescents with special needs (I/DD and MH/BH) have the same aspirations as typically developing adolescents:

- Education
- Independence
- Employment
- Friends/social network with peers

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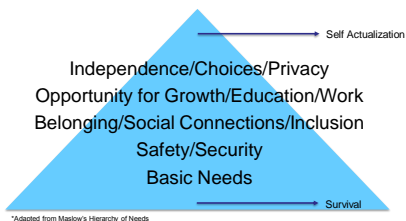
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## Five Themes



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## Transitions & Barriers

### Transitions

- Developmental
- Social & Emotional
- Systems (healthcare, educational)

### Barriers

- Environmental
- Policies
- Systems/Services
- Attitudinal (community, parents)

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## Self-Advocacy & Self- Determination

**Self-Advocacy** – the ability to speak up for what you want and need, knowing rights and responsibilities, finding and using resources.

**Self-Determination** – *the ability to make choices* and *decisions* based on personal *preferences* and *interests*, to monitor and regulate own actions and to be *goal-oriented* and *self-directing*

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## Transition Planning

(US Dept. of Education, IDEA)

- Transition planning starts by the time the student reaches age 16. Transition planning may start earlier (Age 14)
- Transition planning takes place as part of developing the student's Individualized Education Program (IEP) and considers areas such as postsecondary education/vocational training, employment, independent living, and community participation.
- The IEP team (which includes the student and the parents) develops the transition plan.
- The student must be invited to any IEP meeting where postsecondary goals and transition services needed to reach those goals will be considered.
- The IEP team Transition services are based on the student's needs and must take into account his or her preferences and interests.

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## Less Restrictive Alternatives

### Use of Alternatives

- Representative Payee
- Bank Accounts
- Special Needs Trust
- Supportive Housing with services

### Advance Directives

- Health Care POA
- Advance Instruction – MH Treatment
- Living Will
- Power of Attorney

### Supported Decision Making Agreement

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## Supported Decision Making Agreement

- Between a Person with a Disability and a Network of Supporters
- Based on the Interests and Needs of the Person with a Disability
- Provides Written Guidance to Network
- Helps Individual Make a Decision
- Voluntary and Revocable
  - <http://supporteddecisionmaking.org/>

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## Resources

North Carolina Department of Health and Human Services  
<http://www.ncdhhs.gov/assistance/guardianship/guardianship-alternatives-to-guardianship>

NC Guardianship Association  
<http://www.nc-guardian.org/>

Arc of North Carolina  
<https://www.arcnc.org/guardianship>

Disability Rights North Carolina  
<http://www.disabilityrightsncc.org/guardianship>

National Resource Center for Supported Decision-Making  
<http://supporteddecisionmaking.org/>

NC Post-Secondary Education Alliance  
<http://www.cidd.unc.edu/psea/resources.aspx>

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## Thank You!

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